

APPEAL NO. 92404

On June 18, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding as the hearing officer. The issue before the hearing officer was whether the claimant, (claimant), appellant herein, has disability caused by a (date of injury) injury. The hearing officer determined that appellant had disability from the date of injury to October 15, 1991, and that respondent, the employer's workers' compensation insurance carrier, is liable for temporary income benefits for that period. The hearing officer further determined that the preponderance of the evidence did not show that appellant's (date of injury) injury caused him to have disability after October 15, 1991. Appellant appeals the decision; respondent requests that we affirm the decision.

DECISION

Because a complete record of the contested case hearing is not available for our review, we reverse and remand.

The hearing was tape recorded. There is no indication that a court reporter was at the hearing. The record indicates that three tapes were used to record the hearing. We do not have tape number two for review which, from a review of tape numbers one and three, apparently contained part of appellant's testimony and part of the testimony of appellant's witness. When we checked with the hearing officer regarding the missing tape, he indicated that the Appeals Panel was sent only two tapes and that no other tapes could be located at the field office. Article 8308-6.42 of the 1989 Act requires the Appeals Panel to consider the "record developed at the contested case hearing." See Texas Workers' Compensation Commission Appeal No. 92153 (Docket No. redacted) decided May 29, 1992. The hearing officer may be able to avoid having to recall the aforementioned witnesses for testimony if an audible tape recording of the missing portions of their testimony can be located. In any event, it is necessary upon remand that the record be reconstructed sufficiently so that this panel can fully review all of the testimonial evidence, statements of counsel, and rulings of the hearing officer.

We reverse and remand for appropriate reconstruction of the record. Pending resolution of remand, a final decision has not been rendered in this case.

Robert W. Potts
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Philip F. O'Neill
Appeals Judge